



City of Carmel

Carmel Board of Zoning Appeals Regular Meeting Monday, March 27, 2006

The regularly scheduled meeting of the Carmel Board of Zoning Appeals met at 6:00 PM on Monday, March 27, 2006, in the Council Chambers of City Hall, Carmel, Indiana. The meeting opened with the Pledge of Allegiance.

Members in attendance were Leo Dierckman, James Hawkins, Earlene Plavchak, Alan Potasnik and Madeleine Torres, thereby establishing a quorum. Angie Conn and Mike Hollibaugh represented the Department of Community Services. John Molitor, Legal Counsel, was also present.

Mrs. Plavchak moved to approve the minutes of the February 27, 2006 meeting as submitted. The motion was seconded by Mr. Dierckman and **APPROVED 5-0.**

Mrs. Conn gave the Department Report. Item 4 h, Stonegate Apartments had been tabled. Item 12h was one day late with Public Notice. The Board would need to suspend the rule for public notice of twenty-five days. Usually the Department places signs on all the properties letting the public know of the public hearing. Signs were not placed on the properties this month because of a change in procedure. Next month the Petitioner will need to place the signs. The Board will need to vote to waive the rule about sign placement so that all the items can be heard this month.

Mr. Dierckman moved to waive the rule for signs and suspend the rule for public notice. The motion was seconded by Mrs. Torres and **APPROVED 5-0.**

Mr. Molitor gave the Legal Report. He and the City Attorney had received a request from Martin Marietta's attorneys for all documents comprising or reflecting communications with the members of the Board regarding the applications prior to and including the date of the last meeting. If the Board has any, please advise him. There were several objections raised at the last meeting. He felt the Board should rule on those before starting the Public Hearing. Martin Marietta had voiced an objection regarding the unavailability of Mayor Brainard for further cross-examination after his report at the beginning of the last meeting.

Mr. Phears stated they would stand on their objection and would like to hold the hearing open for further cross-examination.

Mr. Molitor stated that cross-examination is not conventional. It is allowed under Indiana law, but not required. He recommended the Board make a motion to sustain that objection and provide for the hearing to be held open until such time that the Mayor is available.

Mr. Hawkins moved to hold the hearing open until the Mayor can be made available. The motion was seconded by Mrs. Torres and **APPROVED 4-1**, with Leo Dierckman casting the negative vote.

Mr. Molitor stated that Mr. Kane had objections to some of the questions that had been put to the Mayor in regard to issues that had been raised in prior settlement negotiations.

Mr. Kane stated that the objection in his letter to Mr. Molitor had to do with the comments made by Mr. Phears during the February 27 meeting following the cross-examination of Mayor Brainard. Mr. Phears indicated that had he had the opportunity to continue to cross-examine the Mayor, there were certain areas he wanted to get into with the Mayor having to do with a certain meeting at which certain alleged events occurred that involved the Mayor and other staff members regarding reviewing of reports, etc. His objection was under evidentiary law in the State of Indiana. Any kind of discussions made during a settlement meeting are inadmissible for any purpose. The meeting to which Mr. Phears alluded was a settlement meeting involving Martin Marietta Materials, representatives of the City of Carmel, and representatives from remonstrators. Therefore, those comments are inadmissible. He asked that the comments be stricken from the record or ordered to be disregarded.

Rebuttal:

Zeff Weiss, 3400 One American Square, Indianapolis. They did not take issue with what Mr. Kane was saying with respect to any settlement discussions between Kingswood and Martin Marietta. This Board acts in a quasi-judicial manner. They cannot make a settlement; the Board must decide the issues. Any comments that were made that had nothing to do with the settlement or potential settlement is fair game. If the Mayor indicated that he was going to cause the Department Report to be changed, that is not settlement discussion, but a statement of fact. They had no problem with not bringing anything into this proceeding that related to settlement discussions with Kingswood. They reserved the right and believed they could delve into things the Mayor discussed in front of the Board. The rule is that it cannot be introduced into the tribunal, but it can be discovered itself, because discovery is much wider than what is admissible. They felt Mr. Molitor would comment on it, if asked.

Mr. Molitor recommended that the Board sustain the motion, but caution Mr. Kane that Martin Marietta may be given fairly wide latitude to ask questions subject to the possibility that they may violate privilege with regard to settlement negotiations. That can be raised at the time of the specific question.

Mr. Phears stated there were three Staff Reports and this new ruling, if upheld, would prevent them from saying that the Mayor had said there would be a new Staff Report.

Mr. Molitor stated that he recommended the motion should be sustained to the extent that it would preclude Martin Marietta from asking questions regarding the privileged communications with respect to settlement negotiations between Kingswood and Martin Marietta.

Mr. Phears stated that he understood.

Mr. Molitor stated that any party could object to any testimony if they believe it is privileged. He believed they needed to do it this way in order to preserve the rights of the various parties.

Mr. Hawkins moved to sustain Kingswood's objection. The motion was seconded by Mr. Dierckman and **APPROVED 5-0.**

Mr. Molitor stated that Martin Marietta had previously objected to the submittal of the February Staff Report past the time prescribed by State Law. The hearing was postponed when that matter came to light,

but the Board has not formally ruled on that objection. He recommended that the Board vote to sustain that objection and have the February Staff Report stricken from the Board's record.

Mr. Dierckman moved to sustain the objection and remove the February Staff Report from the record. The motion was seconded by Mr. Hawkins and **APPROVED 5-0.**

Mr. Molitor stated that Martin Marietta's attorneys stated that Jeffrey Hudson had submitted a letter to the Board in regard to appraisal information. Mr. Hudson had Mr. Ezell file a motion to quash the subpoena. It was his understanding that the motion to take the deposition was not honored and Mr. Hudson did not appear for the deposition which had been tentatively scheduled for last Friday, March 24. The Board had in front of them Mr. Ezell's motion to quash. In regard to Indiana trial rules, they allow for discovery to take place between parties to an agency proceeding such as the BZA, but they don't give the BZA power to issue or enforce subpoenas. He recommended that the Board take no action in regard to either the motion to take the deposition or the motion to quash the deposition. The Board may want to encourage the parties to agree voluntarily for a deposition, but he did not feel the Board had the power to mandate whether it took place or not.

Mr. Hawkins stated that, as a Board, they did recommend that the parties try to get together to work it out.

Mr. Weiss stated that it was hard for them to know what was going to happen as to whether Mr. Hudson was going to speak. There had already been an introduction of his opinion into the record. Depending on how things go, they would ask for the opportunity to ask him a few questions in respect to his opinion.

Mr. Molitor recommended that the Board would allow for questioning of Mr. Hudson at an appropriate time in the proceedings. If Mr. Hudson wishes to testify, it could be at that time if convenient, or at the end of the hearing, or at a later date when the Mayor appears.

Mr. Molitor stated that the issue had been raised as to whether Board members should recuse themselves from further participation in the proceedings on the basis of some of the irregularities that surrounded the last meeting.

Mrs. Plavchak stated that her only concern would be that if this Board ultimately decides not in favor of Martin Marietta and the fact that none of the members were recused, she would hate for that to become the sole basis for another lawsuit against the City. If Martin Marietta does not agree that the Board can give them a fair judgment, the Board should know that right now, rather than go through all this and have them say the Board could not judge impartially. She wanted to know now before they go through all this.

Mr. Weiss stated that it was a reasonable request. Regrettably he could not give the assurance tonight on behalf of Martin Marietta. They believe the process has been tainted by the Mayor's appearance last month. This is not just an issue of Martin Marietta waiving it, if the vote goes against them. If the vote would go in favor of Martin Marietta, then anyone else could raise the same issue on appeal that the Board was biased by what the Mayor had said. The Board is not just asking Martin Marietta to waive their rights to appeal, but everyone else also. They need to continue with their objection and ask the Board to recuse themselves. If the Board elects to go forward, they will see how things turn out. But they cannot assure the Board that Martin Marietta or anyone else would bring a lawsuit if they were disappointed. They were not aware that the Mayor was going to speak at the last meeting. That should not have been done. The law provides that the Executive that appoints three of the five Board members should not tell the Board how to

vote. The Mayor did not mention one thing about the ordinance, statute or merits of the petition. He just did not think they were appropriate within the City of Carmel. That is undue bias. The law is clear on how this is to proceed. The Board is a quasi-judicial body and sits in the stead of a court to make unbiased decisions. Someone does not make a speech to a court. The facts should speak for themselves. The Board did strike the February Staff Report. However, the March Staff Report is a reversal of the original December Staff Report which was written prior to the influence of the Mayor. They renewed the objection that the March Staff Report also be stricken because it is also the subject of undue influence by the Mayor. He is the Executive who hires and fires the Director of the Department of Community Services. The process has been tainted and Martin Marietta has been deprived of their rights.

Mr. Phears stated that the Board has worked hard and fair on two prior applications. They would have preferred for the Mayor never to have created this problem. The Kingswood neighborhood has leaned heavily on the Mayor to do this as he promised in his 2002 campaign promise.

Mr. Molitor recommended that the Board ask if there were representatives of the remonstrators who wished to weigh in on this as to whether or not they are in agreement with the statements made by Martin Marietta.

Robert Gossman, Carolina Commons, stated his subdivision had not elected a representative. He asked if the line of appeal to unfavorable ruling was a Court appeal and if so, the individual members of the Board did not have to be concerned, because it was the City that would be sued.

Larry Kane, 11268 Williams Court in Kingswood. He could not speak on behalf of all the remonstrators, because the issue has only been discussed within Kingswood and its Board of Directors. They did instruct Mr. Molitor that Kingswood had no objection to this Board hearing the proceeding. They did not feel the members had been tainted. They felt Martin Marietta was trying to intimidate the Board with its claims, objections, etc.

Mr. Molitor stated that there were two or three ways to go. Each member could decide if they could participate and make a fair and impartial judgment at the end of the proceeding. The Board may want to make a ruling that the Mayor's statement from last month be stricken from the record. And/Or the Department Report for March could be stricken from the record.

Mr. Hawkins asked Mr. Phears if he had an alternative. If at least three of the Board members recuse themselves, the Mayor will then appoint the next three. He understood the objection, but did not see where they could go with this.

Mr. Phears did not feel the Mayor could legally appoint the Board. There is a good argument to be made that the Mayor tainted this Board deliberately. Kingswood and the Mayor were not happy with this Board's two prior decisions. The Board may have to be a Court appointed Board. He did not know the answer. They would proceed with whatever the Board decided. They know there were contacts outside the process, because there was a letter from Mr. Bromund to the Board.

Mr. Hawkins stated that he had a letter from Mr. Bromund, but it had been stamped by the Department. He did not receive it directly.

Mr. Weiss stated that they did not know what the Board had and had not received. The Department had told them that the letter, along with an email from Mr. Hession, was sent to each member of the Board.

Mr. Molitor stated that it is generally the Department's job to collate all the input that comes in from members of the public and distribute that to the Board.

Mr. Hawkins stated that he was confused as to why everything else was acceptable, but for those two items.

Mr. Weiss stated that according to statute, all communications go to the Department of Community Services. It has an opportunity to issue a Department Report and it can do so no later than five days prior to the hearing. But it is not, as a general rule, appropriate to send along letters and information from third parties. They go into the file and the file can be viewed at the appropriate time. The statute says that no one shall contact the Board with the intent to influence the outcome of the decision. Those letters are doing just that, telling the Board to vote the petition down. That may be inappropriate contact.

Mr. Hawkins asked if the letters were just written remonstrance.

Mr. Molitor stated that he disagreed with Mr. Weiss on the statement of the law. Members of the public who contact the City staff have an expectation that those communications are going to be forwarded on to the Board for its consideration for whatever weight the Board members determine it should have. He did not feel the Department had acted improperly in that regard.

Mr. Potasnik felt the gentleman from Carolina Commons was correct, if they precede one way or another. It is the Board's object to make a determination and they can be overturned by the Court.

Mr. Molitor felt that Martin Marietta could waive any objection, if they could be sure that everyone on the other side would waive the same objection.

Mr. Phears stated that he understood the rights of both parties, but why not hear it and move on.

Mr. Molitor stated that each Board member should decide if they can participate and secondly whether there should be some other remedy provided for the objections raised by Martin Marietta.

Mr. Hawkins asked that if the Board is comfortable with someone else objecting to what was said by the Mayor or in those reports, is that something that Martin Marietta would not appeal on.

Mr. Weiss stated that the Board was asking Martin Marietta to waive, but not anyone else. Mr. Kane stated he was speaking on behalf of himself and even if he was talking about the Kingswood Board, he cannot waive on behalf of every resident of Kingswood and every adjoining neighbor. If the Board elects to go forward, Martin Marietta will go forward on the merits and see where it goes. It is unfair to ask Martin Marietta to waive, unless the Board can get everyone else to waive on this subject matter, which is the Mayor's involvement in the process, before the Board and DOCS. They were not as hung up on the other issues. He did not agree with Mr. Molitor's interpretation. He felt materials should have been presented to the Board at the hearing.

Mr. Hawkins asked if they were asking the Board to strike the Mayor's statements as well as the March Report.

Mr. Phears stated it would be hard to disregard the Mayor's input. This was a one-sided waiver request. The Mayor stated he would do everything he could to keep Martin Marietta from expanding and they do not know the extent of what the Mayor did. He came down here and made a speech which they've read the transcript. It does not have anything to do with the ordinance or anything the Board will be deciding, other than to say "Don't do this."

Mrs. Torres moved to strike the Mayor's comments from the record. The motion was seconded by Mr. Dierckman and **APPROVED 4-1**, with Mr. Hawkins casting the negative vote.

Mrs. Plavchak asked if the main objection to the February Report was that it was given to the Board less than the five days required. The March Report had the five day advance, so what is the problem with it.

Mr. Weiss stated that the issue with the February Report was that he was under the impression from Mr. Molitor that the report would not be given to the Board until the conclusion of the hearing because it wasn't issued five days before the hearing date. He was going to object to the report in total, not because of the five days, but because the report was changed by the Department from the December Report, based on undue influence from the Mayor. The December Department Report was generally favorable to Martin Marietta on this petition and told the Board to consider the application for approval. The February and March Reports recommended denial and changed some of the fundamental findings, even though there had been no additional information factually provided to the Department since the issuance of its December Report. It was the undue influence that caused the Department to change its report, causing them to ask that the Department Report be stricken and that the Department not be able to react or provide testimony based on that report.

Mr. Hawkins asked Mr. Hollibaugh if the Spectra December 9 letter, outlining a number of issues, was included in the December Report.

Mr. Hollibaugh did not recall if that had made it into the overall content of the Department Report. There was no response from Martin Marietta until the letter February 8. So the Department did have additional information upon which they could base the Staff Report.

Mr. Kane wanted to respond to the objection being posed by Mr. Weiss with respect to the March Report. He felt that Martin Marietta was seeking to create a perception to this Board that any report after the initial report was inherently suspect and tainted and could not be accepted by the Board for consideration. He felt that was misplaced without basis in law. He felt that the Board was entitled to consider a report which is submitted on time, which the March Report has been. He also felt Martin Marietta was engaging in revisionist history. There was clearly additional information presented to DOCS and the Board in the Spectra report of December 9, which was addressing a report that came on the slow side from Martin Marietta. He did not feel the Board should allow Martin Marietta to create the perception that no other report could be accepted.

Mr. Molitor stated that the Board may want to take Martin Marietta's objection to the Staff Report under advisement and give Mr. Hollibaugh an opportunity to present an oral report at the end of the meeting. Then Martin Marietta could quiz him on his remarks. That may be an adequate way to deal with the issue.

The issue was not what was in the Staff Report, but the facts that were going to be presented by the parties who were pro and con to the issue.

Mr. Weiss still felt the report should be stricken. The Board still had not asked if the Department Report was changed based on influence by the Mayor. He did not agree with Mr. Hollibaugh that anything factual had been submitted following the December Report. The fundamentals of that report had changed from favorable to unfavorable.

Mr. Hawkins stated that the Board would note the objection and allow Mr. Hollibaugh to respond to any questions. He did want to make clear that the Mayor's comments had been stricken. He asked if any Board member wanted to recuse themselves.

Mr. Dierckman stated that because of the legal threat made by Martin Marietta, that if the Board finds favorably it could be determined that they only found favorably because they were concerned by the lawsuit. He felt it should go straight to Court. He recused himself because he did not want to participate. He left the meeting at this point.

Mrs. Torres asked if the March Staff Report was directly influenced by the Mayor.

Mr. Hollibaugh stated that the Mayor is his supervisor and he talks with the Mayor from time to time. Martin Marietta may have oversimplified the previous Staff Report. The Department clarified it, partly based on the Mayor's feedback. It was part of an overall process, reviewing all the information, including discussions with the Mayor, feedback from Spectra Environmental, Commitments from Martin Marietta and the Vibra-Tech letter of February 8. The Mayor was involved with them in discussions regarding the Staff Report.

Based on that, Mrs. Torres moved to strike the March Staff Report.

Mr. Weiss reminded the Board of the original December Staff Report. It was in the record and sent to the Board for the December 12 hearing and it was untainted.

Mr. Hollibaugh stated that most issues are dealt with in one shot and this has been unprecedented. The Department offers both positive and negative recommendations regarding petitions.

Mr. Potasnik asked Mr. Hollibaugh about his comment of the Mayor's influence and Martin Marietta's influence and the Spectra report. It seemed to him that information was always available from the Staff on any project.

Mr. Hollibaugh stated that the files are public information.

Mr. Potasnik stated that the Board is lay people and they look to the Staff as professionals and they could get information from the Staff by phone or by coming into the office. Was that not allowable any more?

Mr. Hollibaugh stated it is a little different with the BZA than the Plan Commission. Generally they do not communicate with the BZA on projects, specifically whether they are in favor or not. He felt they could answer any technical questions.

Mrs. Plavchak asked if everyone on the Board recused themselves, then Martin Marietta would have to decide if any one appointed could be untarnished. If that was the case, then would this go right to the Court?

Mr. Molitor stated there was no precedent for that sort of thing. He had not seen a case when the BZA was circumvented and the matter went directly to the Court for a decision. There were two possibilities. The Mayor would appoint three alternate members, the Council would appoint one and the Plan Commission would appoint one, if all five were to recuse themselves. Perhaps Martin Marietta might object to the Mayor appointing members, so there might be some agreement that a third party would make the appointments instead of the Mayor. The Mayor would have to agree to that. That was not covered by State law or judicial precedence.

This concluded the Legal Report.

Mr. Weiss agreed that they were ready to move forward with the hearing and they had voiced their objection.

Mr. Hawkins reminded everyone of the outline for the proceedings for the meeting. The Petitioner would have 20 minutes for presentation. The remonstrators and supporters would have 10 minutes. Organized remonstrance would have 20 minutes. The Petitioner would have 10 minutes for rebuttal. The Department Report should be 20 minutes or less. Everyone was to come to the podium and state their name and address and ask the questions of the Board, not the Petitioner. Most importantly, do not be repetitive with statements or information that has already been given. He asked for a show of hands for how many people intended to speak. Approximately 12 to 13 people would have roughly 2 minutes each.

Mr. Kane asked if in the organized remonstrance they be allowed to use discretion to allocate the time for the various speakers.

There were 6 representatives for organized remonstrance, which would give each approximately 3 minutes. A timer would be used and the speakers would be cut off.

Mr. Kane said that they had planned for him to use about 6 minutes of the 20 minute allotment and then allow about a minute and a half for each of the other organized remonstrance.

Mr. Hawkins asked if others needed more time. No one raised a hand, so that time schedule would be used.

H. Public Hearing.

1-2h. Martin Marietta Materials - Mueller Property South

Petitioner seeks special use approvals to establish surface limestone operations & an artificial lake on 96.921± acres.

Docket No. 05090003 SU Chapter 5.02.02 mineral extraction

Docket No. 05090004 SU Chapter 5.02.02 artificial lake

The site is located at the southwest corner East 106th Street and Hazel Dell Parkway.

The site is zoned S-1/Residence - Low Density.

Filed by John Tiberi of Martin Marietta Materials, Inc.

Present for the Petitioner: Zeff Weiss and Wayne Phears. Mr. Weiss stated that they recognize that the Board sits in a quasi-judicial format and that is a difficult responsibility given this amount of remonstrance. He pointed out the property on the location map. The area around the Mueller Property South is Martin Marietta's existing mine. Mining extraction is permitted in the S-1 District as a Special Use. Under Section 21.01 in the Ordinance, the BZA has exclusive jurisdiction on this issue. Special Uses are to be favorably considered except where obviously inappropriate as a result of unique consideration. It is hard to imagine how this could be obviously inappropriate when it is inside this realm of mining that has gone on for a very long time. Everyone in this room should know that mining is a major issue in this entire area. Section 21.03 sets forth twenty-six specific factors that the Board should consider for the criteria by which this petition should be evaluated and decided. They basically revolve around existing zoning, surrounding zoning, street access, utilities, etc. The December Department Report reviewed these issues and indicated that Martin Marietta satisfied all of them. They have been through the TAC process. The Department had hired Spectra Environmental as a consultant, at the recommendation of the Mayor. The original Staff Report indicated that all of these matters have been satisfied. There had been nothing new submitted since that time. Blasting is the issue and blasting is governed exclusively by the State by the Indiana Department of Homeland Security. The Staff has been provided with a copy of a letter from the Indiana Department of Homeland Security stating that they pre-empt local law. The Mayor stated that he did not think the citizens of Carmel were adequately protected and that he did not think blasting was permitted or appropriate in the City of Carmel. That is not the law. They have presented all the facts to DOCS to satisfy the Ordinance. The Board is mandated to find favorably for this application unless there are facts that are not in the record today, that establish that this is inappropriate.

Wayne Phears covered the two dominate issues: blasting and property values. He showed the site plan for the area. St. Charles Avenue in Kingswood borders Mueller North. The old plant was moved from that area to the other side of Hazel Dell Parkway. The blasting is all below 106th Street and there is a buffer of at least 300 feet from the pit lands to 106th Street. It is 1783 feet from the pit lands to the nearest house. The blast would be further away. The blasting in that area will be for a limited time and be 1800 feet away. The City passed a mining ordinance with a minimum buffer of 500 feet. The remonstrators make a point of saying this is a seamless expansion. That's true because there would be no new plant, no new entrance, office or parking. The existing plant will handle everything. They will be driving the pit limits to the north. There has been a mine in this area for a very long time and its products have been used everywhere in this community. There is no need to find a new site for the products when one already exists. He shared two reports from Integra for property value analysis. Over the past three years, Kingswood is in the same market with other subdivisions for comparable days on the market, rate of increase of property values, and value per square foot. Kingswood is still a sought-after neighborhood even after all the publicity about the mining. He shared an item from Greg Sovas's report stating that they have never seen a study that showed any diminishing property values because of the proximity of a mine. Mr. Sovas is the mining expert from Spectra Environmental who was hired by the City. Mr. Phears shared a blasting table showing Peak Particle Velocity (PPV), which is a measure of vibration. Most of the items on the table would be permitted at 1.0 inch per second, which is the State standard. Martin Marietta had proposed restrictions of .5 inch per second. Mr. Sovas confirmed that the standards used by Martin Marietta are the definitive blasting standard. Many vibrations in a home are above this standard. The Kingswood residents call the vibrations irksome and irritating. Planning decisions can not be made on what a person finds to be irksome. The Ordinance states the Special Use shall generally be considered favorably unless there is unique consideration that makes it inappropriate. Quarries blast and cannot be inappropriate at a distance of 1800 feet. The

vibration level is not inappropriate because it meets the City Ordinance adopted to regulate Martin Marietta's blasting operations. The only standards to apply are those adopted by the City (.5 inches per second) or the State of Indiana (1.0 inches per second). The limits proposed by Spectra on Kingswood's blasting cannot be supported by any government entity. The Board must make a decision based on objective criteria. Martin Marietta's extensive blasting commitments mirror as much of the City's Ordinance as possible.

Mr. Weiss distributed information to the Board for the record.

Remonstrance: (Individuals limited to one minute each)

Robert Baldwin, 4322 Breckenridge, Blue Creek Woods Subdivision, immediately to the west of the property owned by Martin Marietta. He took opposition to the blasting for public safety. The trucks using 106th Street as an alternate route cause hazards and affect the quality of life. Their windows rattle and explosions occur after 5:00 PM. There is little to indicate that limits would be held to.

Randy Clark, 10515 Power Drive, Williamson Run Subdivision. He knew that Martin Marietta was a good corporate citizen that had donated a lot of land. He works from home and is tired of the interruptions. He remembers from business law that he is entitled to the quiet and peaceful enjoyment of his property and this is being denied. He was disappointed that they were not discussing ending all blasting. There are other alternatives for the materials. He believed his discontent did matter.

James Christensen, 10491 Lakeshore Place, west of the area. His house shakes quite a bit over half a mile from the site. It is not just an issue of noise. The house shakes like a mini earthquake when the explosions go off. He would not have a problem with just the noise. There must be an effect on their homes. They have cracks in their chimney and sewer system that he suspects are caused by these mini earthquakes. He works at a medical center and he knows that vibrations from construction, which are lower than the ones he feels in his home, affect the medical equipment. This is obviously inappropriate.

Randy Dick, Huntington Drive, Kingswood. He felt it was inappropriate or they would not have been dealing with the petition for the last year. On February 9 a blast shook his house like an earthquake and two pictures fell from the walls and broke. If possible, he would like to know what the velocity of the blast was on that day. If the current blasting situation is untenable for Kingswood residents, moving the blasting closer and modifying the buffer will make a bad situation even worse.

Gina Shupe, 4969 Kingswood Drive. She felt it was inappropriate use when the bowls in her cabinets rattled together. Her children are wakened from naps, scared and wondering what is happening in the house. That is the reality of what is already happening with the current levels.

David Ezell, 5068 Huntington, Kingswood. Martin Marietta has suggested that the law that regulates this is all in their favor. However, there is also common law. Twice a day or more, they trespass on everyone's property with their blasting. According to Indiana Law, they are liable for any damage they do, including the mental anguish they cause. He did not feel the Board could ignore common sense as to what these vibrations do to their homes. He felt Martin Marietta was probably anticipating the expansion of I-69 to increase their business. Through the years they have moved closer to the homes.

Rand Gengenbach, 5011 Westwood Circle, Kingswood. Thirty years ago he lived in the Woodlands on Stratford Street. His recollection of the mine back then was the sound of distant thunder. His current residence and previous residences are both about 4000 feet from the mine. He moved into the neighborhood knowing there was a mine in the area. He had lived with the mine before, but it is not the same. Now his desk moves underneath his elbows. He can feel the bathtub move underneath him when his house sways. He can hear the nails in his roof creak when his home is contorting from the blasting. He felt that was inappropriate.

Marcus Freihofer, 11136 Bradbury Place, Kingswood. According to high school physics, if the mine is moved closer to Kingswood, it can't do anything but cause vibrations in the ground from the blast with a much bigger impact than they are feeling today. He felt the Board should ask Martin Marietta at what PPV are they currently blasting. Imagine what it will do if they increase from what they are doing today.

Melissa Barth, 373 E. 106th Street, just west of the existing mine. They have lived there less than three years and have completely remodeled their home. They have cracks in their new ceramic tile, the basin in the master bath, the trim work and driveway. They have a number of nail pops in their roof. Every day she straightens pictures on her wall from the blasts at 1:00 and 3:00. She was concerned about her resale value. She would never have bought the house if she had done more research.

Tom Yedlick, 5053 St. Charles Place, Kingswood. He did not feel that Martin Marietta had satisfied all the requirements in the Ordinance. He pointed out four principles of zoning law:

1. Non-conforming Uses cannot be expanded.
2. Carmel has declared that all of Martin Marietta's operations are Non-Conforming Uses.
3. Martin Marietta and the City have both defined this project as an expansion of a Non-Conforming Use.
4. Therefore, it is not eligible for Special Use treatment.

He questioned and wanted justification of how an expansion of a Non-Conforming Use could be treated as a Special Use. They are trying to circumvent the standards of a Use Variance which are much stricter than a Special Use.

Remonstrance: (Organized)

Larry Kane, 11268 Williams Court, member of the Mining Committee of the Kingswood Homeowners Association. This Special Use would bring blasting as much as 1300 feet closer to Kingswood, Woodcreek, Sycamore Farms and Carolina Commons. Other subdivisions impacted would be Blue Creek Woods, Williamson Run, Briar Lane Estates and Woodlands, as well as St. Elizabeth Seton Catholic Church. At a minimum, there are 1178 families represented at this meeting. The remonstrators oppose this Special Use for the following reasons:

1. Mining by blasting could not be within the intended meaning of mineral, sand and gravel extraction that may be permitted in a Special Use in a residential district. Contrary to Martin Marietta, that has not been decided by this Board in a factual content that involved blasting. Blasting is a heavy industrial use, much different than extraction.
2. The application must be viewed on a case by case basis, using the applicable factors and criteria of the Ordinance.
3. The criteria include social and neighborhood factors, such as compatibility of permitted and existing uses, neighborhood integrity, economic factors for the community and surrounding

property values. The key criteria are whether the proposed Special Use is inappropriate under these criteria.

4. Martin Marietta will bring the blasting operation roughly 40% closer to the nearest residences. No reduction is proposed, so the impact will increase over time as current buffer is consumed and negatively impact property values.
5. The blasting that exists at the current Indianapolis North Plant is part of a Non-Conforming Use. They are now asking to expand to a new site.
6. Martin Marietta asserted that the Board must approve this because the Ordinance requires generally favorable consideration toward Special Use application. That ignores the remainder of the Ordinance which says it does not apply if the use is obviously inappropriate.
7. Martin Marietta has asserted that this Board has no right to regulate blasting. The remonstrators contend that Martin Marietta is erroneous and misses the point. The determination this Board must make is not regulation of blasting. The purpose of the State regulation is for public health and safety. The Board must decide if the proposed Special Use, which includes blasting, is compatible with the nearby residential properties and other uses.
8. Martin Marietta has asserted the Board must approve the application since the blasting operation complies with the State regulatory standards. This is a misleading and erroneous assertion. It means the Martin Marietta proposed use is not illegal. That just gets them to the table to have their proposal considered.
9. The blasting standards to which Martin Marietta asserts compliance are based on national guidance, intended to protect buildings from serious structural damage. They have nothing to do with nuisance impacts of blasting on residents occupying the affected structures or emotional or psychological distress resulting from those impacts.

He reminded the Board that the matter is not the regulation of blasting, but whether their Special Use should be denied because it does not comply with the criteria of the Zoning Ordinance. It is obviously inappropriate with the existing residential uses. Their proposal should be denied for failing to satisfy criteria of the Ordinance. The heavy industrial use of the proposed surface mining with blasting is either outside the scope of the available Special Use of mineral extraction or is inappropriate because it is incompatible with the nearby high-quality residential developments, churches and schools. It is a serious threat to the integrity of the neighboring communities and will diminish the property values.

Susan Becker, 5029 Kingswood Drive, Kingswood Homeowners Association President, representing the residents of 221 homes. They have opposed all the previous Martin Marietta applications because they do not want the mine or the blasting to come any closer. They do not want to shut down the operation. Martin Marietta was there first. However, the new application is for land they lease, but not own. Kingswood residents now feel that they were there first. Their houses shake daily and people are startled by the blasts. Potential buyers walk away because they wonder about the blasting moving closer. The eleven subdivisions pay approximately \$4,800,000 annually in property taxes, while the Mueller property pays only about \$80,000 annually in property taxes. She felt their homes, foundations, windows, and streets will physically suffer. Their ability to enjoy their property in peace and comfort will suffer even more. She felt it was obviously inappropriate use for the adjoining neighborhoods, parks, schools and churches. It could have an economic impact on all of southeast Carmel.

Mr. Hawkins reminded everyone that this was a public forum and to please refrain from applause, catcalls and disruptions.

Matt O'Donnell, 3688 Power Place, on behalf of Williamson Run Homeowners Association Board of Directors, representing approximately 175 homes. They would like the Board to deny any further encroachment into their high-developed residential areas that are currently negatively impacted by the presence of the existing Martin Marietta mine. It is difficult to ask a community to continue to endure this dirty, invasive industry which clearly exists in stark contrast to the beautiful neighborhoods and progressive city that other states strive to emulate. Increasing the number of heavy trucks would further exacerbate difficult traffic problems at Allisonville Road, 96th Street, and Keystone Avenue. It would increase the litter and damage to the streets and cars caused by these immense hauling trucks. To allow further expansion of Martin Marietta for mining and blasting would be a failure on the part of the Board to protect them from inappropriate uses of residentially zoned property. They rely on the Board, as community representatives, to safeguard their lives and properties. They have already experienced loss of comfort and increased cost due to damage to their homes. Their long presence in Carmel should not guarantee them expansion with blasting.

Fred Glaser, 10538 Lakeshore Drive East, Briar Creek Subdivision and a member of the Carmel City Council. He urged the Board to deny the petition. He has lived here since 1987 when American Aggregates owned the property. In 1987 he did not feel the blasting at his house like it is today. Since Martin Marietta has taken over in the last few years, they do feel it at 106th and Lakeshore Drive East.

Charles Lane, 10487 Lakeshore Place in Briar Creek Subdivision, representing the Homeowners Associations from Woodlands and Briar Creek, which is 419 homes. They have lived there two and half years. When they first moved there, the blasting was hardly noticeable at 3:00 PM on Fridays. Now it is two or three times daily. His home has suffered cracks and his home is settling into the crawl space. He felt the damage was from the blasting and the petition should be denied.

Karen Karr, 9917 Bridger Drive, Vice President of Briar Lane Estates Homeowners Association. The neighborhood includes approximately 160 homes and families. Her opposition was based on the fact that the blasts are alarming and she was concerned for the safety of her family. Her house shakes several times per day, to the point that the crystal in the china hutch rattles together. Expanding the blasting will escalate the problem. After hearing tonight's remonstrators, permanent damage is probably being done to the property, and will affect future property values.

Chuck Applequist, 4417 Blue Creek Drive, Blue Creek Woods Homeowners Association President. Kingswood is not the only neighborhood affected by the mining. They are opposed to the expansion. The law may permit the blasting, but that does not mean that it is appropriate. This expansion does not meet the criteria for appropriate use. It is a highly intensive industrial activity. They feel this expansion will have a negative impact on their property values. Further expansion will also negatively impact their ability to enjoy their property in a quiet safe neighborhood.

Tom Macy, 5011 Williams Drive in Kingswood. He is the Pastor at Faith Church in north Indianapolis and moved to the area two years ago. They chose Carmel for its excellent reputation. He has been stunned by the impact of the blasting that has shaken their house and felt like an earthquake. In addition, the dust, noise, and nuisance of the trucks are incompatible with the quality of life. This expansion of the open pit mine and blasting will become more unbearable.

Public Hearing portion was concluded.

Mr. Weiss asked if Jeffrey Hudson was present for questioning. If not, they would like his opinion, which had been submitted for the record, be stricken from the record.

Mr. Molitor suggested Mr. Hudson could be available for questioning at the same meeting as the Mayor.

Mr. Hawkins reminded them that the Mayor's comments had been stricken from the record.

Mr. Weiss stated he did not need to question Mr. Hudson because he had an affidavit stating that Mr. Hudson is not what he purports to be, which is an Indiana State licensed appraiser. The Indiana State License Agency states that he is an appraiser trainee. He has a bias which violates the standards of the Indiana Administrative Code. He submitted the information for the record.

Discussion continued regarding Mr. Hudson's credentials and testimony.

Mr. Ezell is the counsel for Mr. Hudson. Mr. Hudson had received a subpoena to appear at Ice Miller two days subsequent to receipt of the subpoena. Mr. Ezell has spoken to Mr. Mixdorf at Ice Miller on two occasions to continue it as a professional courtesy so that they could schedule it for a date and time that was convenient for him and Mr. Hudson. On both occasions, Mr. Mixdorf conveniently failed to mention anything about the licensing issue. Mr. Ezell was not sure Mr. Hudson's letter was based on any licensing. He simply stated what he believed to be the values of Kingswood. He agreed with Mr. Molitor that Mr. Hudson had the right to present whatever evidence he has. It is the Board's determination if they should hear it and what credence to give it. He is a homeowner applying his expertise and knowledge in providing his opinion on the property values. He asked that it not be stricken.

Discussion followed on striking the letter.

Mr. Hawkins stated that the Board would note Mr. Weiss's findings and would retain the letter as part of the proceedings.

Rebuttal:

Mr. Phears stated that there had been a lot of talk about this being an appropriate use. That is not the decision to be made by this Board. The Council already made that decision. They left mining in the S-1 District when the area was annexed into the City. This is a decision about whether to grant a Special Use. The Ordinance says that the use is allowable as a conditional use that should generally be considered favorably unless it is obviously inappropriate. The Board cannot find it obviously inappropriate based on blasting because blasting is inherent in the use that Council said is a Special Use in the S-1 District. This Board cannot rule it out and rewrite the Zoning Ordinance. This has nothing to do with trucks. More area is going to be mined. They do not surface blast two or three times every day of the week. The blasting records do not indicate that. They have been blasting for over 30 years and the only limit on the quarry is 1.0 inches per second. They are proposing to limit blasting to .5 inches per second as stated in the Mining Ordinance, which was adopted to regulate Martin Marietta mining. The .5 inches per second is the same as every day activities that occur in a house. The stone is used in Carmel everyday. This is a "not in my backyard" concept, even though the residents had moved to the area. The site is surrounded by mining and Hazel Dell Parkway, which used to be part of

the mining site. The Ordinance makes this an appropriate use, if they meet the criteria. From the original Staff Report, there are five factors addressed by the Staff:

1. Soil composition favorable for mining.
2. Materials mined from the site will be used within the City and they ought to consider limiting or mitigating blasting. They proposed to limit at the levels proposed in the Ordinance.
3. Social neighborhood factors. Mineral extraction from blasting, as long as it mitigates those things, may be considered a less intensive use.
4. The mine does not require water or sewer facilities.
5. Minimal vehicular impact.

The December Staff Report recommended consideration after the concerns are addressed. The March Staff Report recommended negative consideration. Each of the five items has been re-written. People stated that it was a nuisance and irksome, but planning decisions cannot be based on that. Decisions must be based on the law established by the Carmel City Council as to what is allowable Special Use. The remonstrators are the same group who asked Carmel to set the lower limit of .5. No other municipality has the limits proposed. They have five pages of commitments on the blasting.

A five minute recess was taken. The Board reconvened in about ten minutes.

Mr. Weiss renewed their objection and it was duly noted by Mr. Hawkins.

Mr. Hollibaugh gave the Department Report. He commended Martin Marietta and the Kingswood mining committee for the time they had put in. He said the petition had come a long way from the initial submittal. The City was disappointed that throughout the discussions between Kingswood and Martin Marietta, they were not able to come to a compromise. The Department has learned about the issue of mining through the time they have spent on the Martin Marietta petitions since 2000. Spectra Environmental has also been a lot of help. There has been a lot of reference to numbers in the Mining Ordinance and for all practical purposes the Mining Ordinance does not exist. The ordinance and numbers in it were drafted to deal with the current mining operation and its impact. He did not believe that the Board had to be governed by that on any petition or issue of expansion. The Department was not trying to govern blasting. Blasting is clearly a part of this petition. The Board now knows the potential impact of blasting. He knew before John Tiberi was the Manager of Martin Marietta that there was some seismographic monitoring that was done by Martin Marietta and provided to Kingswood residents that perhaps showed they were blasting below the .5 PPV. In the December Staff Report there was a letter of interest that suggested Martin Marietta was comfortable with .1 inch threshold. He did not feel the .5 was sacred. A proposal which involves blasting is not consistent with the Comprehensive Plan. A copy of that is part of the December Staff Report. The December Report states that the Department recommended consideration after all concerns and comments were addressed. He felt they never got there. The Department still has concerns and there are still issues with the commitments. They were not able to determine if the thresholds submitted by Martin Marietta would be effective in mitigating any of the blasting. There were letters from Spectra and Vibra-Tech that caused the changes from the December Report to the February and March Reports. These raised issues and important questions about the mining operation that they felt were necessary to help the City and the Board to better understand the potential negative impacts. The Department recommended negative consideration of Docket No. 05090003 Special Use.

Mr. Weiss questioned Mr. Hollibaugh regarding blasting, zoning and the Mining Ordinance adapted by City Council.

Mr. Hollibaugh agreed that the .5 PPV had been set by the City Council after consulting with the Department and the consultant. Mining was permitted in the S-1 District as a Special Use, if approved. He did not agree that the City Council had zoned the area S-1 so that the mine area would be included in S-1. He felt they were oblivious to the mine area for geographic reasons and the extent of the mining operation. The S-1 district has been in existence for a long time and blasting was not occurring in the area at that time. From 1981 BZA minutes, the owners of the mine testified there was no blasting in the mine. He would provide Mr. Weiss with a copy of those minutes. He agreed that the buffer in the Mining Ordinance is 500 feet. He believed that blasting within the buffer was not allowed. Blasting would be allowed to the extent of the 500-foot buffer. The current proposed blasting is three times the 500-foot buffer, but he felt there were still issues outstanding dealing with the impact and effects of mining that could be reduced to have less of an impact on the adjoining residential area. He agreed that the Mining Ordinance was adopted with Martin Marietta in mind and that 500 feet was the buffer. The Comprehensive Plan is not voted on by the BZA, but the Comprehensive Plan can be used in any issue. For this area it is low-intensity, community employment area. It was misstated in a section of the Department Report as low-intensity, regional commercial employment area.

Mr. Molitor thought each side should have the opportunity to question the witness, with no new issues being discussed.

Mr. Kane questioned Mr. Hollibaugh regarding the Mining Ordinance.

Mr. Hollibaugh stated that the Mining Ordinance was not in effect because of litigation by Martin Marietta.

Mr. Weiss objected and stated there is an injunction, but the Ordinance is still in play until there is a final decision.

Mr. Kane thought that the law is that the Ordinance is not in effect at this point in time and cannot be enforced.

Mr. Kane asked Mr. Hollibaugh if the Ordinance would not be applicable to this project at a new site with setting blasting levels, even if it were in effect.

Mr. Hollibaugh agreed with Mr. Kane's statement.

Mr. Phears asked Mr. Hollibaugh if the blasting commitments mirrored many parts of the Mining Ordinance blasting commitments and were pretty comprehensive.

Mr. Hollibaugh stated that he had not measured them, but agreed the commitments were pretty comprehensive.

Mr. Hawkins felt that Martin Marietta had provided additional information and since it was 9:00 PM, it was his thought to continue the petition. He would like for Mr. Sovas to attend the next meeting.

Mr. Weiss agreed and understood that the Public Hearing was closed and the testimony of Mayor Brainard was struck from the record.

Mr. Potasnik moved to **continue Docket Nos. 05090003 SU and 05090004 SU** to the next regular meeting on April 24, 2006. The motion was seconded by Mrs. Plavchak and **APPROVED 4-0.**

3h. Kingswood, Sec 2, lot 31 - Policka Property

The applicant seeks the following development standards variance:

Docket No. 06010013 V ZO Chapter 25.02.01 front yard fence height

The site is located at 11125 Westminster Way and is zoned S-2/Residence.

Filed by Greg & Gretchen Policka.

Present for the Petitioner: Greg Policka. He was following up from last month's meeting to present a landscape plan after meeting with Scott Brewer, the Urban Forester. He shared a copy of his landscaping plan. There will be five additional trees planted along the fence along with landscape grasses etc. He planned to have it completed by the end of May.

Remonstrator:

Christopher Booher, 11134 Westminster Way. His front yard looks toward the Policka fence. He knew about the information from Scott Brewer, but had not had a chance to see it or to review it. His biggest concern was that the trees would be a sufficient height for a five-foot fence. He was shown a copy of the landscape plan. The plan consisted of three 8-foot Norway spruce trees, two existing Norway spruce trees and two shrubs at least 36 inches in height between the Norway spruce trees. According to the plan, it looked sufficient to him.

Mrs. Conn gave the Department Report. The Petitioner had met with Scott Brewer as instructed and presented an acceptable plan. The Department recommended positive consideration.

Mr. Potasnik asked about the location of the fence.

Mr. Policka stated the fence surrounds the entire property, but the issue is a five-foot fence height on the side of his corner-lot property that protrudes beyond the building line.

Mr. Hawkins moved to approve **Docket No. 06010013 V, Kingswood, Sec 2, lot 31 – Policka Property.** The motion was seconded by Mrs. Plavchak and **APPROVED 4-0**, by a show of hands.

Mr. Molitor pointed out that they should have had a motion to suspend the rules to allow for a vote by a show of hands.

Mr. Hawkins stated they did have a written ballot sheet, so they signed it.

4h. TABLED ~~Stonegate Apartments off-premise sign~~

~~The applicant seeks approval for the following development standards Variance:~~

~~**Docket No. 06020018 V ZO Chapter 25.07.01-04 off-premise sign in road right of way**~~

~~The site is located north of Meadow Lane & Main Street and is zoned R-4/Residence.~~

~~Filed by Larry Kemper of Nelson & Frankenberger.~~

5-8h. TABLED: Baby Tracts, lots 20-21 – St. Mary & St. Mark Coptic Orthodox Church
~~Petitioner seeks special use amendment approval to expand a church parking lot.~~
~~Docket No. 05090019 SUA Chapter 9.02.A special use expansion~~
~~Docket No. 05090020 V Chapter 23E.07.C.1 parking in front yard~~
~~Docket No. 05090021 V Chapter 23E.07.C.2 no parking lot curbing~~
~~Docket No. 05090022 V Chapter 9.04.03.F over 35% lot coverage~~
~~The site is located at 800 E 110th Street and is zoned R-3/Residence within the Home Place District. Filed by Robert Epstein of Epstein, Cohen, Donahue, Mendes.~~

9-11h. 116th/Keystone Retail Shops

Petitioner seeks the following development standards variances for signage:

Docket No. 06010018 V	Chapter 25.07.02-09.b	total # signs on site
Docket No. 06010019 V	Chapter 25.07.02-09.b	# signs oriented south
Docket No. 06010020 V	Chapter 3.07	definition of sign (logo %)

The site is located at the northeast corner of 116th St. and Keystone Ave. and is zoned B-3/Business within the SR 431 Overlay. Filed by Drew Warner of Eclipse Realty.

Present for the Petitioner: Brian Chandler. The variances are to allow them to position four logos, one representing each of the four tenants in the building, on the south end of the building. There is currently a Starbucks logo on that wall. The Special Studies Committee recommended approval after some changes in the positioning of the logos on the building.

Members of the public were invited to speak in favor or opposition to the petition; no one appeared.

The Public Hearing was closed.

Mrs. Conn gave the Department Report. The design for the logo wall has gone through the Special Study Committee meetings several times. The Department felt there was an alternative solution of a V-shaped ground sign at the southwest corner, rather than a rainbow of colors on the south façade. The Department recommended negative consideration. The Department would support Docket Nos. 06010018 V and 06010019 V if the v-shaped ground sign is placed at the southwest corner of the property.

Discussion followed regarding the v-shaped ground sign and the color logos.

Mr. Chandler felt the v-shaped ground sign was not visible. Also, Sprint could apply for a large wall sign for the south end of the building because they are the tenant at that end of the building.

Mrs. Conn stated that the site already has a variance for total number of signs on the site, so they could do a combination of wall and ground signage.

Mrs. Torres felt the sign was colorful and tasteful and there had been meetings with the neighbors. She was in favor of the sign.

Mr. Hawkins felt people turning right when they see the signs will make a U-turn to get back to the location.

Mr. Chandler guessed that the total length of the four signs would be 40 feet.

Mrs. Conn felt it would be closer to 60 feet long.

Mr. Chandler felt the signage for the tenants branded their location. According to his leases, his tenants are entitled to identification signage.

Mrs. Plavchak liked the Starbucks logo in place of words. She felt the logo sign was unique signage.

Mr. Hawkins asked about the size of the sign Sprint could put on the south wall.

Mrs. Conn stated it could be 30 square feet.

Mr. Chandler stated that the logo signs will be more than 30 square feet; therefore, they needed these variances.

Inaudible comments from the audience.

Mrs. Torres moved to approve **Docket Nos. 06010018V, 06010019V, and 06010020V, 116th/Keystone Retail Shops**. The motion was seconded by Mrs. Plavchak and **APPROVED 3-1** with Mr. Potasnik casting the negative vote.

12h. Appeal - Little Farms, Lot 16pt

The applicant seeks an appeal of the Board's decision, in order to have 2 lots, each less than 8,000 sq ft each.

Docket No. 05120005 A ZO Chapter 9.04.02.D minimum lot size

The site is located at 10506 Combs-- and is zoned R-3/Residence within the Home Place Overlay. Filed by Shahpor Shahbahrani.

Present for the Petitioner: Shahpor Shahbahrani. He would like to divide the lot into two parcels. Each would be 7820 square feet, which is 180 square feet less than required. He would build a 2500 square feet two-story brick townhome. It is an older neighborhood and this would enhance the area and raise the value. He showed pictures of the conditions of the neighboring houses and their lot sizes.

Members of the public were invited to speak in favor or opposition to the petition; no one appeared.

The Public Hearing was closed.

Mrs. Conn gave the Department Report. The Petitioner is appealing the Board's decision from last year on the square footage of the lots. The Petitioner proposes to build a 2-unit, 2-story townhome on one of the lots. There may be some issues in the future with the setbacks. If this was approved, the Petitioner would need to go through the Primary Plat Amendment process and the Secondary Plat process before the Plan Commission. The Department recommended positive consideration with the understanding that the Petitioner must go through the platting process.

Mr. Hawkins asked if there would be a Public Hearing for the platting process because there had been some objections the last time, because the Petitioner did not have a plan for the lots.

Mr. Shahbahrami stated that he had shown his plans to the neighbors and they liked his plans.

Mr. Molitor stated that the Board could include commitments covering building appearance and aesthetics since they would not be covered in the platting process.

Mrs. Torres moved to approve **Docket No. 05120005A, Appeal – Little Farms, Lot 16pt** with the **Commitment** that it will be an all brick two-story building. The motion was seconded by Mr. Hawkins and **APPROVED 4-0.**

I. Old Business.

There was no Old Business.

J. New Business.

There was no New Business.

K. Adjourn.

Mrs. Torres moved to adjourn. The motion was seconded by Mr. Hawkins and **APPROVED 4-0.** The meeting was adjourned at 9:50 PM.

James R. Hawkins, President

Connie Tingley, Secretary